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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

BYRON BONNELL,

Defendant and Appellant.

A153994

(Alameda County
Super. Ct. No. 17CR018987)

Defendant Byron Bonnell appeals a judgment entered upon a jury verdict finding him guilty of burglary, taking and attempted taking of a vehicle, and unlawful possession of personally identifying information. He contends on appeal (1) he is entitled to the benefit of a recent statutory amendment giving the trial court discretion to strike a prior serious felony conviction enhancement imposed under Penal Code section 667, subdivision (a)(1)¹; and (2) the sentencing minutes should be amended to correct a clerical error. The Attorney General properly concedes both issues.

I. BACKGROUND

Defendant was charged with first degree residential burglary (§ 459; count 1), with allegations that another person was present in the residence (§ 667.5, subd. (c)(21)) and that the offense was a violent felony (§ 667.5, subd. (c)); attempted driving or taking of a vehicle (Veh. Code, § 10851, subd. (a) & Pen. Code, § 664; count 2)); unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a); counts 3 & 4); and misdemeanor

¹ All undesignated statutory references are to the Penal Code.

identity theft (§ 530.5, subd. (a); count 5). The information included allegations of prior serious or violent felonies (§ 667, subd. (a)(1); 667.5, subd. (c), 1192.7, subd. (c)), two prior prison terms (§ 667.5, subd. (b)), and a prior strike (667, subd. (a)(1)). All counts were based on a crime spree that took place on April 18, 2017. We need not recite the underlying facts to resolve the issues on appeal.

A jury trial took place. After the court amended count 5 to charge misdemeanor possession of personally identifying information under subdivision (c)(1) of section 530.5, the jury found defendant guilty on all counts. Defendant admitted the prior conviction allegations.

At the sentencing hearing, the trial court granted the prosecutor's motion to reduce counts 2 and 4 from felonies to misdemeanors because there was no proof the value of the vehicles in question exceeded \$950. (See *People v. Page* (2017) 3 Cal.5th 1175.) The district attorney asked the court to sentence defendant to the maximum term of 23 years. The court sentenced defendant to a total of 11 years in prison, calculated as follows: for count 1, the low term of two years, doubled for the strike; and for count 3, a consecutive term of two years, with an additional five years for a serious felony enhancement (§ 667, subd. (a)(1)). The misdemeanor terms were ordered to run concurrently.

II. DISCUSSION

A. Senate Bill 1393

Defendant asks us to remand the matter to the trial court for resentencing pursuant to Senate Bill No. 1393 (Stats. 2018, ch. 1013, § 1), which amended sections 667, subdivision (a), and 1385, subdivision (b), effective January 1, 2019, to allow a trial court to exercise its discretion to dismiss a prior serious felony sentence enhancement imposed under section 667. At the time defendant was sentenced, the trial court did not have this authority. (Former § 1385, subd. (b).) Defendant contends, and the Attorney General concedes, these amendments apply retroactively to judgments that are not yet final. We agree. (*People v. Zamora* (2019) 35 Cal.App.5th 200, 208; *People v. Garcia* (2018) 28 Cal.App.5th 961, 971–973 (*Garcia*).)

In such a case, we remand the matter to the trial court unless the record clearly indicates the court would not have dismissed or stricken the prior serious felony conviction if it had discretion to do so at the time of sentencing. (*Garcia, supra*, 28 Cal.App.5th at p. 973, fn. 3; *People v. Almanza* (2018) 24 Cal.App.5th 1104, 1110–1111.) The record here contains no such indication. The term the trial court imposed was well below the maximum authorized, and the court expressed hope for defendant’s future rehabilitation if he addressed his drug addiction. As the Attorney General acknowledges, remand is appropriate here.

B. Clerical Error

Defendant also points out that the record contains a clerical error. Count 5 originally charged defendant with misdemeanor identity theft in violation of section 530.5, subdivision (a). But at trial, the jury was given instructions on misdemeanor possession of personally identifying information (§ 530.5, subd. (c)(1)), and the jury convicted him of this offense. The court minutes from the date of sentencing, however, erroneously reflect a sentence for the offense as originally charged. The parties agree that this clerical error should be corrected, and that it is appropriate to direct the trial court to do so on remand. We agree.

III. DISPOSITION

The matter is remanded for resentencing in accordance with the views expressed herein and for correction of the minutes to reflect a conviction of section 530.5, subdivision (c)(1), on count 5. In all other respects, the judgment is affirmed.

TUCHER, J.

WE CONCUR:

POLLAK, P. J.

STREETER, J.